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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,400	03/15/2000	David Del Val	777.040US2	9200

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EXAMINER

KOSTAK, VICTOR R

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/525,400

Applicant(s)

DEL VAL ET AL.

Examiner

Victor R. Kostak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/15/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Applicant's arguments filed on 10/25/04 have been fully considered but they are not persuasive. Applicant argues that his application was filed on the same day as that of Vellanki, so Vellanki therefore cannot be used as a reference based on 35 USC 102(e).

The examiner points out that Vellanki predates applicant by virtue of its provisional application 60/033,662 dated 01/30/97 (a copy thereof being submitted herewith), and applicant's claimed subject matter is all accounted for therein. The rejection based on 35 USC 102(e) is therefore proper and is repeated below from the last Office action.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31-64 stand rejected under 35 U.S.C. 102(e) as being anticipated by Vellanki et al.

The client/server network of Vellanki (noting particularly Figs. 1, 5C; the drawings are the same as those of applicant) enables reception by the server multiple communication requests from a single client, each request using a different network protocols, and accordingly responding to those requests using the same respective protocols(e.g. col. 6 lines 1-16), thereby meeting claims 31 and 46.

As for claims 37 and 52, the client receives responses from the server which responses correspond to the requests sent by the client, wherein each of the responses employ the same

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protocol as those used by the respective different protocols per request (noting again col. 6 lines 1-16, for example).

As for claims 32 and 47, the requests naturally get responses per request, such being the purpose of making requests (col. 6 lines 14-16).

Regarding claims 33, 40, 41, 48, 55 and 56, the requests are made in parallel, which implies concurrent communication (col. 13 lines 18-26).

As for claims 34, 43, 49 and 58, Vellanki uses the protocols so recited in these claims (col. 6 lines 8-13).

Regarding claims 35, 44, 50 and 59, the data communicated is multimedia data (e.g. col. 10 lines 4-7).

More specifically regarding claims 36, 45, 51 and 60, the multimedia data can be video, audio or text data (noting again col. 10 lines 4-7).

Vellanki also determines a “most advantageous” protocol among the protocol selections uses by the server responses (col. 15 lines 42-57), thereby meeting claims 38 and 53.

As for claim 61, Vellanki also designates a predefined “best” protocol and determines if that protocol is being used by a response from the server, an autodetect mode stops and the parameters for that protocol are therefore kept (col. 13 lines 28-35).

Similarly regarding claims 39 and 54, involves the highest priority and is predefined (irrespective of it being the best protocol: col. 15 lines 42-57 again).

As for claims 42 and 57, there is a set time frame during which the multiple requests are sent (col. 13 lines 36-41).

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Considering claims 62 and 63, if the best protocol is not used, the most advantageous is selected (col. 13 lines 27-41). Likewise if the most advantageous is not adequate, determining another most advantageous protocol.

As for claim 64, the client/server comprise a network that employs a network topology and a step of the protocol selection step includes discovering that the topology has changed (col. 7 lines 10-23).

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this final action should be mailed to:**

Box AF  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

**(703) 872-9306 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.



Victor R. Kostak  
Primary Examiner  
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